



producing Halimi live at trial. Home Depot opposes the motion and argues that plaintiff has known of Halimi since late 2005 when plaintiff named Halimi as an individual with relevant knowledge. Home Depot argues that plaintiff has failed to explain why the deposition was not taken during the discovery period, and that the deposition might result in the need to take additional depositions.

The discovery period closed on February 2, 2007, more than 13 months ago. Plaintiff must show good cause for any extension of deadlines,<sup>1</sup> which the motion fails to demonstrate. If Halimi's testimony was only available for trial by means of deposition, the Court would be more inclined to favorably consider the request.<sup>2</sup> However, this is not what the motion states. The motion merely argues that preserving the testimony by way of deposition would be less expensive and more convenient, and provide greater flexibility than producing Halimi live at trial. These are not reasons to grant an out-of-time deposition. Federal Rule of Civil Procedure 26(b)(2)(C) provides that the Court may limit the use of discovery methods if "the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought." Plaintiff has known of the witness for over two years and had sufficient time to depose him prior to February 2007.

Failing to show good cause, the motion for leave is ORDERED DENIED.

**SIGNED** on March 31, 2008.

  
NANCY STEIN NOWAK  
UNITED STATES MAGISTRATE JUDGE

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<sup>1</sup>F.R.Civ.P. 16(b).

<sup>2</sup>See Charles v. F.W. Wade, 665 F.2d 661, 664 (5<sup>th</sup> Cir. 1982) (denial of out-of-time deposition was abuse of discretion where witness was incarcerated and more than 100 miles from the place of trial, and without deposition jury was deprived of access to testimony of relevant witness.)